Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

COMMENTS OF AT&T WIRELESS SERVICES, INC.

AT&T Wireless Services, Inc. ("AWS") hereby submits its comments on the Commission's *Second Further Notice* issued in the above-captioned proceeding.[1/]

[1/] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171; *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571; *Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size*, CC Docket No. 92-237, NSD File No. L-00-72; *Number Resource Optimization*, CC Docket No. 99-200; *Telephone Number Portability*, CC Docket No. 95-116: *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, Report and Order and Second Further Notice of Proposed Rulemaking (rel. Dec. 13, 2003) ("*Order*" or "*Second Further Notice*").

The Commission seeks comment on three proposals for assessing universal service contributions based on the number or capacity of the "connections" a carrier provides to the public switched network. It notes that some commenters have advocated a move to a connection-based mechanism because they believe it "would eliminate the need for contributors to distinguish between interstate and intrastate revenues, or revenues from telecommunications and non-telecommunications services, as is required under the current methodology."[2/] This assumption is unfounded. Use of a connection-based assessment would not remove the restrictions imposed by Section 2(b) on the Commission's regulation of intrastate services and, therefore, even if it were to use connections as basis for establishing contributions, the Commission would have to permit carriers to deduct from the assessment the portion attributable to the intrastate services they provide.

It makes no difference whether universal service contributions are calculated based on the number of connections a carrier has or the revenue it derives from end users because Section 2(b) precludes any assessment that touches on intrastate services. As the Fifth Circuit Court of Appeals made clear, Section 2(b) "directs courts to consider FCC jurisdiction over a very broad swathe of intrastate services."[3/] The plain language of the statute denies the Commission "jurisdiction with respect to . . . charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service. . . ."[4/] Under the Fifth Circuit's analysis, there is no escaping Section 2(b)'s restrictions simply through adoption of a connection-based assessment; just as "the inclusion of intrastate revenues in the calculation of universal service contributions easily constitutes a 'charge . . . in connection with intrastate communication service,'" an assessment based on connections is a "*charge*" and, to the extent

---

2/ *Second Further Notice* ¶ 70.

3/ *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 447 (5th Cir. 1999).

4/ *Id.*

the services provided over those connections are intrastate, the charge is "*in connection with intrastate communication service*."[5/]

The Commission's primary goal in proposing a connection-based assessment methodology appears to be to broaden the universal service contribution base.[6/] Although such a policy objective may be laudable, attempts to accomplish it by shifting the burden from providers of interstate services to wireless carriers and other providers of primarily intrastate services are unlikely to survive a legal challenge. Moreover, adoption of a connection-based mechanism has the potential to harm the very consumers the universal service provisions are intended to protect. Indeed, as the Commission noted in an earlier phase of this proceeding, flat-fee assessments could "be overly regressive and discriminatory to low-volume users," and could "increase the contribution burden on low-income customers."[7/] Accordingly, rather than adopt rules that are both legally suspect and potentially inequitable, the Commission should alleviate some of the pressure to find more and more sources of contributions by establishing policies aimed at controlling the size of the universal service fund.

Because the Commission must base its universal assessment solely on interstate services regardless of what assessment mechanism it ultimately adopts, it should provide general

---

5/ *Id.*

6/ *Second Further Notice* ¶ 69 ("[W]e remain concerned that any contribution system based on interstate telecommunications revenues will be dependent on the ability of contributors to distinguish between interstate and intrastate telecommunications and non-telecommunications revenues. . . . [A] connection-based mechanism may be the best alternative to ensure the long-term viability of the Commission's universal service mechanisms as the telecommunications marketplace continues to evolve.").

7/ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171; *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571; *Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size*, CC Docket No. 92-237, NSD File No. L-00-72; *Number Resource Optimization*, CC Docket No. 99-200; *Telephone Number Portability*, CC Docket No. 95-116: *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752, 3773 ¶ 49 (rel. Feb. 26, 2002).

guidance on the methodology for calculating interstate usage on wireless networks. While AWS believes that the Commission should retain its wireless safe harbor for carriers that lack the resources to determine call jurisdiction in an efficient manner, it is likely that the recent doubling of the safe harbor threshold (from 15 percent to 28.5 percent)[8/] will motivate many wireless contributors to prepare their own traffic studies. One of the major reasons offered by the Commission for adopting the wireless safe harbor four and a half years ago was that it would help ensure consistency – and therefore fairness –across the industry in the calculation and reporting of interstate revenues.[9/] Thus, it is important that the Commission establish guidelines on various issues, including the frequency of study updates and how to count certain incoming and roaming calls, to ensure that all CMRS carriers use a uniform methodology for determining the percentage of interstate minutes carried on their networks.

[8/] As the Commission notes, CTIA submitted traffic studies from six wireless carriers, which reported interstate revenues ranging from 10 to 28.5 percent. The Commission chose the highest figure for its new safe harbor in order to "provide mobile wireless providers an incentive to report their actual interstate telecommunications revenues if they are able to do so." *Order* ¶ 22. While it is not readily apparent why the Commission wants to take on the burden of ensuring the consistency and accuracy of the methodologies utilized by dozens of CMRS carriers, its decision to raise safe harbor threshold appears to be having its intended result.

[9/] *Federal State Joint Board on Universal Service*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21257 ¶ 10 (1998) ("We share the concern . . . that some CMRS carriers presently may have an unreasonable advantage in the market as a result of either unintentional or purposeful under-reporting of the end-user interstate telecommunications revenues.").

CONCLUSION

For the foregoing reasons, the Commission should retain its revenue-based assessment regime for universal service contributions, and should adopt guidelines for the preparation of wireless carrier-specific traffic studies.

Respectfully submitted,

AT&T WIRELESS SERVICES, INC.

/s/ Douglas I. Brandon
Douglas I. Brandon
Vice President - External Affairs
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 223-9222

Howard J. Symons
Sara F. Leibman
Bryan T. Bookhard
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

Of Counsel

February 28, 2003